Rev. Rul. 67-325, 1967-2 C.B. 113

An organizations which provides recreational facilities without charge to the residents of a township is not organized and operated exclusive for charitable purposes where the basis for charitable qualification is dedication of the facilities involved to community use and the use of the facilities is restricted to less than the entire community on the basis of race. Contributions and transfers to or for the use of such an organization are not deductible under section 170, section 2055, section 2106, or section 2522 of the Internal Revenue Code of 1954. Such an organization is not exempt from Federal income tax as no organization described in section 501(c)(3) of the Code.

Advice has been requested whether contributions to an organization which provides recreational facilities without charge to residents of the township of Y are deductible under section 170 of the Internal Revenue Code of 1954 where the organization restricts the use of its facilities to less that the entire community on the basis of race.

The organization is a nonprofit corporation organized for the purpose of providing community recreational facilities including a swimming pool, an athletic field, and a pavilion suitable for picnics and other activities. The facilities are available without charge to residents of the community without regard to age, physical condition, or social or economic circumstances. However, the corporation restricts the use of the facilities to persons of a particular race.

Section 170 of the Code provides a deduction for income tax purposes, subject to limitations which are not material for present purposes, for contributions made to or for the use of a corporation, trust, or community chest, fund, or foundation--

> * * * organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals * * *.
>
> (Section 170(c)(2)(B).)

Similar provisions allowing deductions for charitable contributions for estate and gift tax purposes are contained in section 2055, 2106, and 2522 of the Code. Corporations, and any community chest, fund, or foundation, organized and operated exclusively for similar purposes, are also exempted from Federal income taxes, subject to limitations not here material, by section 501(a) and (c)(3) of the Code.

Prior to 1959 the Internal Revenue Service did not generally recognize that contributions to organizations providing community recreational facilities were deductible for income tax purposes even though the facilities was provided free of charge for use by all the residents of the particular community. In 1959, however,

the previously published nonacquiescence in the decision of the Tax Court of the United States in Isabel Peters v. Commissioner, 21 T.C. 55 (1953), nonacquiescence, C.B. 1955-1, 8, was withdrawn and an acquiescence was substituted therefor, C.B. 1959-2, 6. Revenue Ruling 59-310, C.B. 1959-2, 146, states the reasons for the acquiescence.

The Peters case involved an issue as to the deductibility under section 23(o) of the Internal Revenue Code of 1939 (corresponding to section 170 of the 1954 Code) of a contribution by an individual to a nonprofit corporation formed to operate a public beach, playground, and bathing facilities for the residents of a particular geographical area. No charge was made for the use of the beach. The operations of the corporation were supported solely from contributions, but contributions were not a condition to use of the beach. The Tax Court specifically found as a fact that here was 'no restriction or discrimination' in the use of the beach other than its restriction to the residents of the defined community. The corporation was otherwise organized and operated in accordance with the requirements of section 23(o) of the 1939 Code. It had, however, been ruled by the Service to be exempt from Federal income tax only as a social welfare organization under the provisions of section 101(8) of the 1939 Code (corresponding with section 501(c)(4) of the 1954 Code) and had not been included in the 'Cumulative List of Organizations, Contributions to Which are Deductible Under Section 23(o) and Section 23(q)' of that Code, as in effect in the taxable year in controversy.

The majority opinion of the Tax Court, after discussing the general meaning of the word 'charitable,' went on to hold that the taxpayer's contribution had been made to a corporation organized and operated exclusively for charitable purposes within the meaning of section 23(o)(2) of the 1939 Code. The opinion stated (at page 59):

> * * * The evidence clearly shows that the dominant purpose in establishing and maintaining the Foundation was to provide convenient swimming and recreation facilities for all persons residing in Cold Spring Harbor School district of the Town of Huntington and especially those who could not afford individually to acquire and maintain such facilities. A contribution was not a prescribed condition to the use of * * * (the community beach and recreation facilities) by any resident of Cold Spring Harbor. It was open to contributors and noncontributors alike. No fees were charged. See James Irvine, 46 B.T.A. 246.
>
> In our opinion the Foundation, a nonprofit organization dedicated solely to the promotion of social welfare, should be classified as charitable as that term is used in the statute relied upon. * * *

Five judges of the Tax Court dissented without opinion.

Revenue Ruling 50-310, supra, in stating the reasons for acquiescence in the holding in the Peters case, disagreed with an implication in the opinion that every nonprofit organization dedicated solely to the promotion of social welfare should be classified as charitable, but concluded that the organization involved had been shown by the record in the case to be exempt as a charitable organization within the meaning of section 101(6) of the 1939 Code (corresponding with section 501(c)(3) of the 1954 Code) and that contributions to the organization were deductible under section 23(o) of the 1939 Code (corresponding with section 170 of the 1954 Code).

Revenue Ruling 59-310 also dealt with the right of an organization to exemption from income tax under section 501(a) of the Code, as a charitable organization described in section 501(c)(3), in a case in which the facts were in all respects similar to those in the Peters case except that not all of the funds of the organization were raised by public subscription. Certain of the income of the organization was derived from charges for admission to the swimming pool, but that fact was regarded as not controlling since such income was minor in amount and since the charges were 'purely incidental to the orderly operation of the pool.' After these and other pertinent facts had been stated, the Revenue Ruling concluded as to this question:

> * * * Accordingly, since the property and its uses are dedicated to members of the general public of the community and are charitable in that they serve a generally recognized public purpose which tends to lessen the burdens of government, it is concluded that the instant organization is exclusively charitable within the meaning of section 501(c)(3) of the code and is entitled to exemption from Federal income tax under section 501(a) of the Code.

The conclusions reached in the Peters case and in Revenue Ruling 59-310 are in accord with the general law of charity, that is, that community recreational facilities may be classified as charitable if they are provided for the use of the general public of the community. If that condition is satisfied, a sufficient public purpose is deemed to be served to justify treatment of the dedication of the facility as charitable for purposes of the law of charitable trusts, the main branch of the general law of charity (apart from laws pertaining to taxation) in which questions as to whether particular purposes are charitable have arisen.

In that general body of law, certain purposes have been deemed to be beneficial to the community as a whole even though the class or classes of possible beneficiaries eligible to receive a direct benefit from the dedication of property to the particular purpose do not include all the members of the community. See in that regard Restatement (Second), Trusts sec. 368, comment b, and sec. 369-373 (1959); IV Scott on Trusts (2d ed. 1956), sec. 368.

Providing a community recreational facility is in the general class of purposes which are recognized as charitable only where all the members of the community are eligible for direct benefits. As was stated in the concurring opinion of Mr. Justice White in Evans v. Newton, 382 U.S. 296, at 308-309 (1966):

> Otherwise a trust to establish a country club for the use of the residents of the wealthiest part of town would be charitable. Professor Scott states this principle as follows:
>
> "As we have seen, a trust to promote the happiness or well-being of members of the community is charitable, although it is not a trust to relieve poverty, advance education, promote religion, or protect health. In such a case, however, the trust must be for the benefit of the members of the community generally and the merely for the benefit of a class of persons.'
>
> IV Scott on Trusts sec. 375.2, at 2715 (2d ed. 1956). (Emphasis added.) Accord, Trustees of New Castle Common v. Megginson, 1 Boyce 361, 376, 77 A. 565, 571 (Sup. Ct. Del. 1910) (Trust for town common was charitable; '(i)t is public, because it relates to all the inhabitants of a particular community and not to any classification of such inhabitants, or to any group thereof separately from the other inhabitants by any distinction of race, creed, social rank, wealth, poverty, occupation, or business . . .'); Restatement, Trusts sec. 375, comments a and c (1935); Restatement (Second), Trusts sec. 375, comment a (1959); see also Bogert on Trusts sec. 378 (2d ed. 1964).

See also the general discussion of this subject in Brunyate, 'The Legal Definition of Charity,' 61 Law Quarterly Review, 268, 275-285 (1945).

In this body of general law pertaining to purposes considered charitable only where all the members of the community are eligible to receive a direct benefit, no sound basis has been found for concluding that there would be an adequate charitable purpose if some part of the whole community is excluded from benefiting except where the exclusion is required by the nature or size of the facility. Exclusion of a part of the entire community on the basis of race, religion, nationality, belief, occupation, or other classification having no relationship to the nature or the size of the facility, would prevent the purpose from being recognized as a sufficient public purpose to justify its being held charitable under this general body of law.

The favored treatment of charitable organizations for Federal tax purposes in the income, estate, and gift tax legislation enacted in the current century has not provided a comprehensive definition of charitable purpose in the various statutory

provisions that have been enacted. It is clear for this and other reasons that those statutory provisions do not reflect any novel or specialized tax concept of charitable purposes, and that the income, estate, and gift tax provisions of the Code here in question should be interpreted as favoring only those purposes which are recognized as charitable in the generally accepted legal sense.

That the Congress has legislated in this area with reference to organizations generally recognized as charitable is demonstrated by the legislative history of the Corporation Tax Law of 1909 (section 38 of the Act of August 5, 1909, 36 Stat. 112), which specifically exempted from that tax, among others, 'any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.' That provision, which was the forerunner of all the statutory provisions here in question, originated in a Senate amendment, the debate on which indicates that the provision was intended to favor organizations which were generally recognized as organized and operated for exclusively charitable purposes. See in that regard 44 Cong.Rec. 4148-4151, 4154-4157.

The legislative history of that provision and the absence of other revealing indications of congressional intent in relation to the many subsequent provisions of the internal revenue laws providing favored tax treatment for charitable organizations tend strongly to support the position taken in the only comprehensive definition of the term 'charitable' provided in the regulations concerning the income, estate, and gift tax provisions of the Code. Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides:

> Charitable defined. The term 'charitable' is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of 'charity' as developed by judicial decisions.

For the foregoing reasons it is concluded that sections 170, 2055, 2106, and 2522 of the Code, to the extent that they provide deductions for contributions or other transfers to or for the use of organizations organized and operated exclusively for charitable purposes, or to be used for exclusively charitable purposes, do not apply to contributions or transfers to any organization whose purposes are not charitable in the generally accepted legal sense or to any contribution for any purpose that is not charitable in the generally accepted legal sense. For the same reasons, section 501(c)(3) of the Code does not apply to any such organization.

Accordingly, contributions to the organization described in the instant case are not deductible under section 170 of the Code. Transfers to such an organization are not deductible for estate

or gift tax purposes under sections 2055, 2106, and 2522 of the Code.

Furthermore, this organization is not exempt from income taxes under section 501(a) of the Code as an organization described in section 501(c)(3).